

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Lester F. Ludwig

Serial No: 09/812,400

Filed: March 19, 2001

For: PROCESSING AND GENERATION
OF CONTROL SIGNALS FOR REAL-TIME
CONTROL OF MUSIC SIGNAL
PROCESSING, MIXING, VIDEO, AND
LIGHTING

Art Unit: 2837

Examiner: Marlon T. Fletcher

Conf. Number: 7356

INTERVIEW SUMMARY

Mail Stop Amendment
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to the June 28, 2006, telephonic interview with the Examiner on this application, Applicant provides the following Remarks:

REMARKS

On June 28, 2006, Applicant's representative, Jeffery Lotspeich, conducted a telephonic interview with Examiner Fletcher. This interview was made possible by the cooperation of SPE Lincoln Donovan. Applicant and the undersigned gratefully acknowledge the kind assistance of Mr. Donovan in this matter.

The agenda for the interview was originally intended to encompass the present application, as well as copending applications Ser. Nos. 10/703,023 and 10/702,262. However, for reasons that will become clear, the interview was cut severely short prior to discussing most of the outstanding issues in the present application, much less those in the copending applications. Pursuant to MPEP § 713.04, Applicant provides the following remarks.

It was first noted that a Response to the Office Action of January 11, 2006, was timely submitted on June 12, 2006. The undersigned expressed that Applicant's position on this case is clearly set forth in the filed Response, but is willing to clarify any of the 16 points for patentability articulated in the filed Response. Examiner Fletcher remarked that he had not yet considered the Response. Accordingly, the undersigned suggested that the parties discuss each point provided in Response. For clarity, the present Interview Summary will utilize the same headings used in the June 12 Response.

1. Action unclear as to "signal interface" relied upon in Suzuki

Examiner Fletcher clarified that event generator 11 of Suzuki is being used to teach the claim 30 limitation of "an incoming control signal interface adapted to receive an incoming MIDI control signal." The Examiner reasoned that event generator 11 inherently includes an interface to

communicate a signal to unit controller 11. As such, the “interface” of event generator 11 must “receive” the signal before it is sent to unit controller 13.

The undersigned acknowledged the Examiner’s position, and noted that such comments appear to have merit, for which Applicant will consider and address in future communications. However, it was important to note that the Office Action makes no mention of the purported “inherent” teachings of Suzuki. It was stressed that if indeed this is the basis for the rejection, then it should be set forth in the rejection. Examiner Fletcher remarked that an examiner is under no obligation to explicitly set forth reasons why every claim element is anticipated by a prior art reference.

The undersigned disagreed with Examiner’s Fletcher’s interpretation of the rules and laws governing patent examination, but since Examiner Fletcher’s position on this point was now identified, the interview was directed to the next discussion point.

2. Suzuki does not have an “incoming control signal interface”

This point was discussed in conjunction with point 3.

3. Event generator 11 does not generate MIDI signals

The undersigned indicated that even if event generator 11 provides the claimed “interface,” such interface is not “adapted to receive an incoming MIDI control signal” as recited in claim 30. Event generator 11 has absolutely nothing to do with a MIDI signal, and indeed the specification of Suzuki describes event generator 11 as only providing a performance event, an example of which includes a key-on/off event.

Examiner Fletcher disagreed, and indicated that Suzuki does describe event generator 11 as

providing MIDI. The undersigned inquired as to where such a teaching is located in Suzuki, since the Office Action failed to specify this very important information. Examiner Fletcher then provided the following comments.

Examiner Fletcher stated that Suzuki at col. 1, lines 41-44, describes a prior art tone generator that can provide MIDI. Thus, it would be “obvious” to use the teachings of col. 1 to modify the tone color information generator 12 in such a manner that tone generator 12 provides the claimed “MIDI interface.”

The undersigned first remarked that such reasoning was not provided in the Office Action, which unfortunately is a common deficiency in the various Office Actions issued in the present application. Second, Examiner Fletcher was advised that he is addressing the wrong component. The component at issue was performance event generator 11, not tone generator 12. Examiner Fletcher set forth the notion that event generator 11 provides MIDI by asserting teachings that are associated with an entirely different component (i.e., event generator 11 vs. tone generator 12).

When confronted with this glaring deficiency, the Examiner replied with a remarkable line of reasoning, which is set forth as follows.

- 1) Suzuki at col. 1, lines 41-44, describes a prior art tone generator that can provide MIDI.
- 2) It would be “obvious” to use the teachings of col. 1 to modify tone generator 12 in such a manner that tone generator 12 provides MIDI.
- 3) “Everyone knows” that keyboards use both event generator 11 and tone generator 12, and they are always included in the same keyboard component (which by the way is contrary to the explicit teachings of Fig. 2 of Suzuki).

4) Thus, it would have been obvious to modify event generator 11 (which does not provide MIDI and consequently does not have the so called “MIDI interface”) to provide MIDI since event generator 11 is always used in the same keyboard as tone generator 12, and because event generator 11 is shown in Fig. 2 as being in close proximity with tone generator 12.

5) Examiner Fletcher further remarked that event generator 11 also provides the required MIDI based on inherency, in view of the col. 1 disclosure.

The undersigned addressed the deficiencies in the Examiner’s comments as follows.

1) The Examiner’s complex line of reasoning was not provided in the Office Action, and thus this represents yet another example of how the last Office Action (the ninth Action in this application) is inadequate in violation of the explicit requirements set forth in, for example, MPEP 707 and 37 CFR § 1.104(c)(2).

2) The Examiner’s comments are technically inaccurate and are unsupported by the explicit teachings of Suzuki (See, e.g., col. 1, lines 45-47, which specifically denounces the MIDI tone generator arrangement relied upon by Examiner Fletcher), as well as that which is generally understood by those of ordinary skill in the art.

3) The Examiner’s reasoning is contrary to controlling patent law which prohibits rejections based upon arbitrary and unsupported application of the principles of inherency (MPEP § 2112; *In re Newell*, 13 U.S.P.Q.2d 1248, 1250 (Fed. Cir. 1989)), official notice (MPEP § 2144.3), and personal knowledge of an examiner (37 CFR § 1.104(d)(2)).

No agreement was reached on this claim element.

4. No signaling flow from unit controller 13 to tone generator 12

Moving on, the undersigned then addressed the claim 30 limitation of “a controllable low frequency oscillator comprising at least one parameter, said at least one parameter comprising a value selectable from a plurality of values, wherein said value of said at least one parameter is determined by said incoming MIDI control signal.”

The undersigned respectfully submitted that the asserted rejection in the Office Action was technically inconsistent with the teachings of the Suzuki patent. This problem relates to the portion of the rejection which addressed the “at least one parameter” limitation. The Action indicated that tone generator 12 provides this parameter, as determined by an incoming MIDI control signal from unit controller 13. For this to occur, there must be some sort of signal flow (directly or indirectly) from unit controller 13 to tone generator 12. However, Fig. 2 of Suzuki undeniably illustrates that there is absolutely no signal flow from unit controller 13 to tone generator 12. Indeed the opposite is true; input flows from tone generator 12 to unit controller 13. Tone generator 12 receives absolutely no input, much less an incoming MIDI control signal from unit controller 13. Examiner Fletcher makes an attempt to read the limited teachings of Suzuki on claim 30, and in doing so, completely misstates the teachings of that reference.

The undersigned repeatedly articulated the above-noted issue in an attempt to assist the Examiner’s understanding of Applicant’s position. However, Examiner Fletcher flatly refused to address the clearly identified and significant deficiencies of the Rejection and instead provided the following remarkable comments.

- 1) Examiner Fletcher sternly remarked that he does not know what is being claimed, but does know that the claims are very broad and are obviously taught by Suzuki.
- 2) Fig. 2 of Suzuki clearly shows the generation of two separate incoming MIDI

control signals; one from event generator 11 and one from tone generator 12.

3) Claim 30 recites two separate incoming MIDI control signals, which are taught by the two MIDI signals of Suzuki. Thus, the claim is anticipated.

The undersigned then addressed Examiner Fletcher's comments by politely pointing out that claim 30 recites only one incoming MIDI control signal, not two incoming MIDI control signals. Examiner Fletcher disagreed and indicated that claim 30 recites one incoming MIDI control signal in the first claim limitation, and a second incoming MIDI control signal in the second limitation.

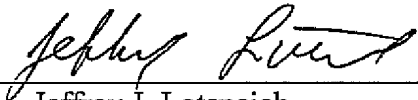
The undersigned noted that the identified portions of the claim refer to the same incoming MIDI control signal. Specifically, the first limitation recites "an incoming MIDI control signal," and in the second limitation the same identical signal is referred to again as "said incoming MIDI control signal." Examiner Fletcher was not convinced, and was steadfast in his position that two separate incoming MIDI control signals were claimed, and that these signals were taught by Suzuki.

The interview subsequently deteriorated to the point where it became clear that Examiner Fletcher was no longer interested in advancing prosecution of the present application, and discussing the remaining 12 points set forth in the Response would not be beneficial. Consequently, the undersigned terminated the interview.

Respectfully submitted,

Lee, Hong, Degerman, Kang & Schmadeka

Date: July 19, 2006

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